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IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.
	)	
EXERSCIENCE, INC.,	)	
6 Omega Court	)	
Middletown, NJ 07748, and	)	
	)	
JAMES MCGREGOR,	)	
6 Omega Court	)	
Middletown, NJ 07748,	)	
	)	
Defendants.	)	

**COMPLAINT FOR FEDERAL TAXES AND PERMANENT INJUNCTION**

The United States of America, at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General of the United States, brings this suit to collect the federal employment, unemployment, and income taxes assessed against Defendants Exerscience, Inc., and James McGregor, and to permanently enjoin the Defendants from continuing to incur additional liabilities for unpaid federal employment and unemployment taxes.

### **JURISDICTION AND VENUE**

1. Jurisdiction over this action is conferred upon this Court by virtue of 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. § 7402(a).
2. Venue is proper in this district under 28 U.S.C. § 1396 because the Defendants are located in this judicial district.

### **PARTIES**

3. Plaintiff is the United States of America.
4. Exerscience, Inc., is a corporation organized under the laws of New Jersey and conducts business within this judicial district.
5. James McGregor resides in Middletown, New Jersey, which is within this judicial district.

### **COUNT I: REDUCE FEDERAL EMPLOYMENT TAX ASSESSMENTS AGAINST EXERSCIENCE TO JUDGMENT**

6. The United States incorporates the allegations set forth in paragraphs 1 through 5, above, as if fully set forth herein.
7. A delegate of the Secretary of the Treasury made the following federal employment tax (Form 941) assessments against Exerscience, Inc., for the tax periods identified below:

<b>Tax Period Ending</b>	<b>Date of Assessment</b>	<b>Amount of Initial Assessment</b>	<b>Balance as of March 7, 2018</b>
June 30, 2003	4/26/2010	\$10,400	\$414
Sept. 30, 2003	4/26/2010	\$10,400	\$438
Dec. 31, 2003	4/26/2010	\$10,400	\$2,738
Mar. 31, 2004	4/26/2010	\$10,625	\$7,427
June 30, 2004	4/26/2010	\$10,625	\$7,341
Sept. 30, 2004	4/26/2010	\$10,625	\$7,261
Dec. 31, 2004	4/26/2010	\$10,625	\$7,170
Mar. 31, 2005	4/26/2010	\$10,690	\$7,194
June 30, 2005	4/26/2010	\$10,690	\$7,086
Sept. 30, 2005	4/26/2010	\$10,690	\$6,974

<b>Tax Period Ending</b>	<b>Date of Assessment</b>	<b>Amount of Initial Assessment</b>	<b>Balance as of March 7, 2018</b>
Dec. 31, 2005	4/26/2010	\$10,690	\$6,852
Mar. 31, 2006	4/26/2010	\$10,740	\$12,457
June 30, 2006	4/26/2010	\$10,740	\$12,257
Sept. 30, 2006	4/26/2010	\$10,740	\$12,026
Dec. 31, 2006	4/26/2010	\$10,740	\$11,798
Mar. 31, 2007	4/26/2010	\$10,740	\$12,833
June 30, 2007	4/26/2010	\$10,740	\$11,363
Sept. 30, 2007	4/26/2010	\$10,740	\$11,147
Dec. 31, 2007	4/26/2010	\$10,740	\$10,944
Mar. 31, 2008	4/26/2010	\$11,675	\$11,710
June 30, 2008	4/26/2010	\$11,675	\$11,546
Sept. 30, 2008	4/26/2010	\$11,675	\$11,393
Mar. 31, 2009	12/5/2011	\$4,077	\$8,708
June 30, 2009	12/5/2011	\$4,077	\$8,626
Sept. 30, 2009	12/5/2011	\$4,077	\$8,544
Dec. 31, 2009	12/5/2011	\$4,077	\$8,463
Mar. 31, 2010	12/5/2011	\$4,049	\$8,314
June 30, 2010	12/5/2011	\$4,049	\$8,248
Sept. 30, 2010	12/5/2011	\$4,049	\$8,169
Dec. 31, 2010	12/5/2011	\$4,049	\$8,097
Mar. 31, 2011	12/5/2011	\$3,815	\$7,569
June 30, 2011	12/5/2011	\$4,470	\$8,282
Sept. 30, 2011	4/8/2013	\$3,544	\$4,423
Dec. 31, 2011	4/8/2013	\$3,544	\$4,297
Mar. 31, 2012	4/1/2013	\$4,086	\$4,971
June 30, 2012	4/1/2013	\$4,106	\$3,913
Sept. 30, 2012	4/1/2013	\$4,003	\$4,067
Dec. 31, 2012	4/1/2013	\$4,057	\$7,835
Mar. 31, 2013	7/22/2013	\$4,501	\$7,713
June 30, 2013	8/26/2013	\$4,752	\$7,341
Sept. 30, 2013	12/30/2013	\$4,564	\$4,395
Dec. 31, 2013	3/24/2014	\$2,756	\$7,341
Mar. 31, 2014	12/8/2014	\$4,871	\$4,365
June 30, 2014	9/15/2014	\$4,096	\$10,059
Sept. 30, 2014	12/8/2014	\$6,461	\$4,533
Dec. 31, 2014	3/30/2015	\$2,937	\$5,687
Mar. 31, 2015	6/29/2015	\$4,962	\$4,780

<b>Tax Period Ending</b>	<b>Date of Assessment</b>	<b>Amount of Initial Assessment</b>	<b>Balance as of March 7, 2018</b>
June 30, 2015	9/21/2015	\$4,423	\$9,917
Sept. 30, 2015	12/14/2015	\$6,561	\$4,523
Dec. 31, 2015	3/14/2016	\$3,032	\$8,652
Mar. 31, 2016	6/27/2016	\$5,964	\$665
June 30, 2016	10/3/2016	\$6,279	\$5,761
Sept. 30, 2016	1/2/2017	\$4,241	\$54
		<b>Total:</b>	<b>\$388,681</b>

8. Notice and demand for the payment of the tax assessments described in paragraph 7, above, was given to Exerscience.
9. Interest and statutory additions to tax have accrued, and will continue to accrue, on the unpaid balance of the federal employment tax assessments described in paragraph 7, above.
10. Exerscience has failed to pay the full amounts due and owing, and there remains due and owing to the United States the sum of \$388,681 as March 7, 2018, plus interest and statutory additions accruing after those dates according to law.

WHEREFORE, the United States requests:

A. That the Court enter judgment in favor of the United States and against Defendant Exerscience, Inc., for its delinquent employment tax liabilities for the various taxable quarters from the second quarter of 2003 to the fourth quarter of 2016, as set forth in paragraph 7, above, in the total of \$388,681 as March 7, 2018, together with all with all interest and statutory additions that have accrued and will continue to accrue after that date according to law.

**COUNT II: REDUCE FEDERAL UNEMPLOYMENT TAX ASSESSMENTS  
AGAINST EXERSCIENCE TO JUDGMENT**

11. The United States incorporates the allegations set forth in paragraphs 1 through 10, above, as if fully set forth herein.
12. A delegate of the Secretary of the Treasury made the following federal unemployment (Form 940) tax assessments against Exerscience, Inc., for the taxable periods described below:

<b>Tax Period</b>	<b>Date of Assessment</b>	<b>Amount of Tax Assessments</b>	<b>Balance as of May 21, 2018</b>
2004	5/17/2010	\$868	\$285
2005	5/17/2010	\$868	\$270
2006	5/17/2010	\$868	\$255
2007	5/17/2010	\$868	\$1,681
2008	5/17/2010	\$868	\$1,553
2009	12/5/2011	\$112	\$1,563
	6/11/2012	\$704	
2010	12/5/2011	\$112	\$1,509
	6/11/2012	\$704	
2011	6/17/13	\$84	\$33
2015	4/18/2016	\$42	\$57
2016	5/8/2017	\$42	\$50
		<b>Total</b>	<b>\$7,256</b>

13. Notice and demand for the payment of the tax assessments described in paragraph 12, above, was given to Exerscience.
14. Interest and statutory additions to tax have accrued, and will continue to accrue, on the unpaid balance of the federal unemployment tax assessments described in paragraph 12, above.
15. Exerscience has failed to pay the full amounts of the federal unemployment tax liabilities due and owing, and there remains due and owing to the United States the sum of \$7,256 as of

May 21, 2018, plus interest and statutory additions accruing after those dates according to law.

WHEREFORE, the United States requests:

B. That the Court enter judgment in favor of the United States and against Exerscience, Inc., for delinquent federal unemployment taxes for tax year 2004 to 2011, 2015, and 2016 in the total amount of \$7,256 as of May 21, 2018, together with all interest and statutory additions that have accrued and will continue to accrue after that date according to law.

**COUNT III: REDUCE FEDERAL INCOME TAX ASSESSMENTS  
AGAINST EXERSCIENCE TO JUDGMENT**

16. The United States incorporates the allegations set forth in paragraphs 1 through 15, above, as if fully set forth herein.

17. A delegate of the Secretary of the Treasury made the following federal income tax (Form 1120) assessments against Exerscience, Inc., for the tax periods identified below:

<b>Tax Period</b>	<b>Date of Assessment</b>	<b>Amount of Tax Assessment</b>	<b>Balance as of May 21, 2018</b>
2003	12/27/2010	\$37,443	\$115,610
2004	12/27/2010	\$34,218	\$101,093
2005	12/27/2010	\$13,062	\$36,454
2006	12/27/2010	\$40,784	\$105,865
2007	12/27/2010	\$31,467	\$74,367
2008	12/27/2010	\$21,075	\$48,081
		<b>Total</b>	<b>\$481,470</b>

18. Notice and demand for the payment of the tax assessments described in paragraph 17, above, was given to Exerscience.

19. Interest and statutory additions to tax have accrued, and will continue to accrue, on the unpaid balance of the federal income tax assessments described in paragraph 17, above

20. Exerscience has failed to pay the full amounts of the federal income tax liabilities due and owing, and there remains due and owing to the United States the sum of \$481,470 as of May 21, 2018, plus interest and statutory additions accruing after those dates according to law.

WHEREFORE, the United States requests:

C. That the Court enter judgment in favor of the United States and against Exerscience, Inc., for delinquent income taxes for tax year 2003 to 2008 in the amount of \$481,470 as of May 21, 2018, together with all interest and statutory additions that have accrued and will continue accruing thereafter according to law.

**COUNT IV: REDUCE TRUST FUND RECOVERY PENALTIES  
ASSESSED AGAINST WILLIAM MCGREGOR TO JUDGMENT**

21. The United States incorporates the allegations set forth in paragraphs 1 through 20, above, as if fully set forth herein.

22. Defendant William McGregor is the sole officer and owner of Defendant Exerscience, Inc.

23. At all times relevant to this suit, McGregor was a person responsible for collecting, truthfully accounting for, and paying over to the Internal Revenue Service the federal income, Social Security, and Medicare taxes withheld from the wages of the Exerscience, Inc. As the sole officer and owner, he made the financial decisions for the company. In addition, he signed checks, including payments to himself, and he signed employment tax returns (Form 941).

24. McGregor willfully failed to withhold, collect, and pay over those taxes to the Internal Revenue Service. He instead allowed expenses to be paid, while these taxes were not being withheld, collected, and paid over. McGregor chose to pay other creditors, including himself, rather than paying the funds that Exerscience held in trust over to the United States.

25. Under 26 U.S.C. § 6672, a delegate of the Secretary of the Treasury assessed against William McGregor the trust fund recover penalty for the taxable periods and in the amounts listed below. These trust fund recovery penalties represent the federal income, Social Security, and Medicare taxes that were withheld from the wages of the employees of Exerscience that were not paid over to the United States.

<b>Tax Period</b>	<b>Date of Assessment</b>	<b>Amount Assessed</b>	<b>Balance as of May 21, 2018</b>
June 30, 2013	1/16/2017	\$2,376	\$2,511
Sept. 30, 2013	1/16/2017	\$2,282	\$2,411
Dec. 31, 2013	1/16/2017	\$1,378	\$1,456
Mar. 31, 2014	1/16/2017	\$2,435	\$2,573
June 30, 2014	1/16/2017	\$2,048	\$2,164
Sept. 30, 2014	1/16/2017	\$3,231	\$3,414
Dec. 31, 2014	1/16/2017	\$1,469	\$1,552
Mar. 31, 2015	1/16/2017	\$2,481	\$2,622
June 30, 2015	1/16/2017	\$2,212	\$2,337
Sept. 30, 2015	1/16/2017	\$3,280	\$3,466
Dec. 31, 2015	1/16/2017	\$1,516	\$1,602
Mar. 31, 2016	1/16/2017	\$2,982	\$3,151
		<b>Total:</b>	<b>\$29,259</b>

26. Notice and demand for payment of the income tax assessments described in paragraph 25, above, was given to McGregor.
27. Interest and costs have accrued, and will continue to accrue, on the unpaid balance of the trust fund recovery penalties described in paragraph 25, above.



28. McGregor has failed to pay the full amounts of the federal income taxes due and owing, and there remains due and owing to the United States the sum of \$29,259 as of May 21, 2018, plus interests and costs accruing after that date according to law.

WHEREFORE, the United States requests:

D. That the Court enter judgment in favor of the United States and against James McGregor for the trust fund recovery penalties assessed against him for the periods from June 30, 2013, to March 31, 2016, with respect to the unpaid federal employment taxes of Exerscience, Inc., in the amount of \$29,259 as of May 21, 2018, together with all interest and costs that have accrued and will continue accruing thereafter according to law.

**COUNT V: PERMANENT INJUNCTION AGAINST  
DEFENDANTS EXERSCIENCE AND JAMES MCGREGOR.**

29. The United States incorporates the allegations set forth in paragraphs 1 through 0, above, as if fully set forth herein.

30. For various tax periods from 2003 to the present date, the Defendants have failed to comply with their federal tax obligations and have engaged in an activity known as “pyramiding,” whereby a business repeatedly withholds taxes from its employees but fails to remit those taxes to the IRS as mandated by law.

31. Such activity has been and continues to be a drain on the United States Treasury.

32. As an employer, Exerscience has been subject to federal employment tax obligations imposed by the Internal Revenue Code, including the duties to:

- a. Withhold, account for, and pay over an estimated amount of income tax for each employee from each paycheck;

- b. Withhold, account for, and pay over the employee portion of the tax imposed upon wages by the Federal Insurance Contributions Act (FICA) from each employee's paycheck;
- c. Pay the employer portion of the tax imposed upon employee wages by FICA;
- d. Submit Employer's Quarterly Federal Tax Return (Form 941) to the United States, along with any withheld employee income tax, withheld employee FICA tax, and the employer FICA tax not already deposited on or before the legal due date (approximately 30 days after the close of each calendar quarter);
- e. Submit Employer's Annual Federal Unemployment Tax Return (Form 940) to the United States along with payment of tax as required by the Federal Unemployment Tax Act (FUTA); and
- f. Make federal tax deposits of a frequency required by the Internal Revenue Code and implementing regulations.

33. The IRS has attempted to bring Exerscience into compliance with its federal payroll tax obligations and to collect past-due payroll taxes from the company, including by:

- a. Meeting in person with Exerscience's power of attorney as well as Defendant James McGregor about the company's payroll tax obligations;
- b. Recording Notices of Federal Tax Liens against Exerscience;
- c. Attempting to negotiate arrangements to collect the past due payroll taxes with the Defendants;
- d. Levying on Exerscience's bank account;

- e. Assessing trust fund recovery penalties, under 26 U.S.C. § 6672, against McGregor for multiple periods described in paragraph 25, above, making him personally liable for the trust-fund portion of Exerscience's unpaid employment taxes; and
- f. Hand-delivering an IRS Letter 903 and Notice 931 to McGregor on July 12, 2016, which put him and Exerscience on notice that if they continued to fail to comply with Exerscience's tax obligations, then the IRS might pursue a suit for civil injunction.

34. Exerscience has a long history of failing to timely file federal employment (Form 941) and unemployment (Form 940) tax returns, as well as failing to make the requisite tax payments of the liabilities due thereunder, which continues to this date. More than 20 of the quarterly employment tax liabilities listed in paragraph 7, above, were assessed without the benefit of an Employer's Quarterly Federal Tax Return (Form 941) being filed. For many of the remaining quarterly returns listed in paragraph 7, above, Exerscience filed its returns well after the due date.

35. Exerscience continues to incur liabilities with each passing quarter and has not demonstrated a willingness to comply with its obligations under the Internal Revenue Code. There is no evidence that Exerscience (or McGregor as its sole officer) will make the necessary effort to become compliant, absent a court order compelling them to do so. This noncompliance has resulted in an amount due that exceeds \$873,388, plus such additional amounts as may continue to accrue as provided by law. More taxes may be due given that the Defendants have failed to file Exerscience's unemployment tax return for the

year 2017 or its quarterly employment tax return for the periods ending December 31, 2017, or March 31, 2018. All of these returns are now past due.

36. Exerscience pyramiding undermines the administrative tools available to the United States for collecting delinquent taxes, as indicated by the substantial liabilities in paragraph 7, 12, and 17, above.

37. An injunction against Exerscience and McGregor (including through any other entity that they may conduct business), requiring them to comply with their federal payroll tax obligations is necessary and appropriate for several reasons, including:

a. Traditional collection methods have not convinced Exerscience and McGregor to stop pyramiding payroll tax liabilities;

b. Anything other than an injunction will encourage Exerscience and /or McGregor to continue pyramiding because it gives the corporation or any similar entity the McGregor may form an unfair advantage over its tax-paying competitors;

c. Each new quarter without an injunction, Exerscience and McGregor continue to fail to pay its employment taxes, which accrues and the United States will be unable to collect. The unpaid employee income taxes, however, must nevertheless be credited to the employees (like McGregor) from whose wages the taxes are withheld. Similarly, the unpaid FICA taxes (withheld portion and employer's portion) must be credited to the employees for purposes of eligibility for Social Security benefits. In effect, Exerscience is stealing funds meant to be held in trust for the Government.

d. An injunction will not injure Exerscience as it will merely compel it to conduct business like every other tax-paying business in the United States. Moreover,

an injunction will protect the public's interest in fair competition by halting Exerscience's illegal practices and leveling the playing field with its tax-compliant competitors.

WHEREFORE, the United States requests:

E. that the Court find that Defendants Exerscience, Inc., and James McGregor have engaged and are engaging in conduct that interferes with the enforcement of the internal revenue laws;

F. that the Court find that injunctive relief under 26 U.S.C. § 7402(a) and the Court's inherent equity powers is necessary and appropriate to prevent Exerscience and McGregor from interfering with the enforcement of the internal revenue laws;

G. that the Court enter an injunction, pursuant to 26 U.S.C. § 7402(a), Fed. R. Civ. P. 65, and the Court's inherent equity powers, ordering that:

1. Exerscience and McGregor shall cause Exerscience and any other employer entity that they control to withhold from each employee's paycheck an appropriate amount of income tax and the employee portion of the FICA tax;

2. Exerscience and McGregor shall cause Exerscience and any other employer entity that they control to timely deposit withheld employee income tax, withheld employee FICA tax, and employer FICA tax in an appropriate federal depository bank in accordance with federal deposit regulations;

3. Exerscience and McGregor shall cause Exerscience and any other employer entity that they control to timely deposit FUTA taxes in an appropriate federal depository bank each quarter in accordance with federal deposit regulations;

4. McGregor shall sign and deliver to a designated IRS revenue officer, or to such specific location as the IRS may deem appropriate, on the first day of each month, an affidavit stating that the required federal income taxes, FICA taxes, and FUTA taxes were fully and timely deposited for each pay period during the prior month;

5. Exerscience and McGregor shall cause Exerscience and any other employer entity that they control to timely file Form 941 employment tax returns and Form 940 unemployment tax returns that come due after the date of the injunction and McGregor shall provide a copy of each filed return to a designated IRS revenue officer in such manner as the IRS deems appropriate, within five days of filing;

6. Exerscience and McGregor shall cause Exerscience and any other employer entity that they control to timely pay all required outstanding liabilities due on each return required to be filed under the Court's injunction order;

7. Exerscience, McGregor, and any other employer entity are enjoined from paying other creditors of Exerscience or from transferring, disbursing, or assigning any money, property, or assets of Exerscience after the date of the injunction order until after such time as the required deposits described in paragraphs G-1 and G-2, and any liabilities described in paragraph G-6, have been paid in full, for any tax period ending after the injunction is issued;

8. Exerscience and McGregor are enjoined from assigning and/or transferring money or property to any other entity to have that entity pay the salaries or wages of Exerscience employees, except for a commercial payroll services provider approved in advance by counsel for the United States;

9. Exerscience and McGregor shall permit a representative from the Internal Revenue Service to inspect Exerscience's books and records periodically with two days' notice of each inspection;

10. McGregor shall notify, in writing, such revenue officer as the IRS designates, if he intend to or do form, incorporate, own, or work in a managerial capacity for another business entity. Regardless of such notification, the preceding subparagraphs of this paragraph G shall apply to any employer entity controlled by McGregor.

H. That the Court require Exerscience and McGregor to deliver to all of their current or future employees or to any other persons acting in active concert or participating with them, a copy of the Court's findings and injunction;

I. That the Court retain jurisdiction over this case to ensure compliance with this injunction, including authorizing the United States to take post-judgment discovery to ensure compliance; and

J. That the Court award the United States other and further relief, including the costs of this action, as may be deemed just and proper under the circumstances.

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**DESIGNATION UNDER LOCAL RULE OF CIVIL PROCEDURE 101.1(f)**

In accordance with Local Rule of Civil Procedure 101.1(f), the undersigned designates the United States Attorney for the District of New Jersey to receive service of all notices or papers in this action at the following address:

Chief, Civil Division  
United States Attorney's Office  
District of New Jersey  
970 Broad Street, Ste. 700  
Newark, New Jersey 07102

/s/ Ari D. Kunofsky  
ARI D. KUNOFSKY  
Trial Attorney, Tax Division  
U.S. Department of Justice



**LOCAL CIVIL RULE 11.2 CERTIFICATION**

Pursuant to Local Civil Rule 11.2, I certify that the matter in controversy alleged in the foregoing Complaint is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

Dated: July 17, 2018,

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney General  
Tax Division

CRAIG CARPENITO  
United States Attorney

/s/ Ari D. Kunofsky  
ARI D. KUNOFSKY  
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## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

United States of America,

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Ari D. Kunofsky, US Department of Justice- Tax Division  
555 4th St., Suite 6112; Washington, DC 20001  
ph. (202) 353-9187

**DEFENDANTS**

Exerscience, Inc., and James McGregor

County of Residence of First Listed Defendant Monmouth  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education <b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☐ 6 Multidistrict Litigation - Transfer  
☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

26 USC 7402

Brief description of cause:

Reduce Assessments to Judgment and Injunctive Relief

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$  
873,388.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

07/17/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Ari D. Kunofsky

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

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UNITED STATES DISTRICT COURT

for the

District of New Jersey

\_\_\_\_\_  
United States of America,

*Plaintiff*

v.

\_\_\_\_\_  
Exerscience, Inc., et al.,

*Defendant*

)  
)  
)  
)  
)  
)  
)  
)

Civil Action No.

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

Exerscience, Inc.  
6 Omega Court  
Middletow, NJ 07748

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Ari D. Kunofsky  
Trial Attorney  
U.S. Department of Justice  
PO Box 227  
Washington, DC 20001

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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UNITED STATES DISTRICT COURT

for the

District of New Jersey

\_\_\_\_\_  
United States of America,

*Plaintiff*

v.

\_\_\_\_\_  
Exerscience, Inc., et al.,

*Defendant*

)  
)  
)  
)  
)  
)  
)

Civil Action No.

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

James McGregor  
6 Omega Court  
Middletow, NJ 07748

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Ari D. Kunofsky  
Trial Attorney  
U.S. Department of Justice  
PO Box 227  
Washington, DC 20001

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: